

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of:)	
)	
Agape Church, Inc.)	
)	CSR 6025-M
v.)	
)	
Community Communications, Inc. for)	
Must Carry of KVTH-TV, Hot Springs, Arkansas)	

MEMORANDUM OPINION AND ORDER

Adopted: March 10, 2003

Released: March 12, 2003

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. Agape Church, Inc. ("Agape"), licensee of television station KVTH-TV ("KVTH-TV"), Hot Springs, Arkansas, filed a complaint pursuant to Section 614 of the Communications Act, as amended, and Sections 76.7 and 76.61(a) of the Commission's Rules, claiming entitlement to mandatory carriage of KVTH-TV on the cable systems of Community Communications, Inc. ("Community") serving the communities of Magic Springs, East Camden, Friendship, Donaldson, Jones Mill, Norman, Percy, Royal, and unincorporated portions of Clark and Garland Counties, Arkansas (the "Communities").¹ Community filed an opposition to the complaint and Agape filed a reply.

II. DISCUSSION

2. Under Section 614 of the Communications Act of 1934, as amended, and implementing rules adopted by the Commission in *Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues* ("Must Carry Order"), commercial television broadcast stations, such as KVTH-TV, are entitled to assert mandatory carriage rights on cable systems located within the station's market.² A station's market for this purpose is its "designated market area," or DMA, as defined by Nielsen Media Research.³ The term DMA is a geographic market designation that defines each television market exclusive of others, based on measured viewing patterns.

3. Pursuant to the Commission's must carry rules, cable operators have the burden of showing that a commercial television station that is located in the same television market is not entitled to

¹ See 47 C.F.R. §§ 76.7 & 76.61(a).

² 8 FCC Rcd 2965, 2976-77 (1993).

³ Section 614(h)(1)(C) of the Communications Act, amended by the Telecommunications Act of 1996, provides that a station's market shall be determined by the Commission by regulation or order using, where available, commercial publications which delineate television markets based on viewing patterns. See 47 U.S.C. § 534(h)(1)(C). Section 76.55(e) of the Commission's rules requires that a commercial broadcast station's market be defined by Nielsen Media Research's DMAs. See 47 C.F.R. § 76.55(e).

carriage.⁴ One method of doing so is for the cable operator to establish that a subject television station's signal, which would otherwise be entitled to carriage, does not provide a good quality signal to the cable system's principal headend.⁵ For UHF commercial television stations such as KVTH-TV, the standard used to determine what constitutes a good quality signal at a cable system's headend is -45dBm.⁶ Should a station fail to provide the requisite over-the-air signal quality to a cable system's principal headend, it still may obtain carriage rights. Under the Commission's rules, a television station, at its own expense, may provide a cable operator with specialized equipment to improve the station's signal to an acceptable quality at a cable system's principal headend.⁷ A cable system that provides 12 or fewer activated channels, serves 300 or fewer subscribers, and does not delete broadcast signals from carriage is not subject to these must carry requirements.⁸

4. KVTH-TV operates on UHF Channel 26 and is a full power commercial television station licensed to serve the Communities, which are in the Little Rock-Hot Springs, Arkansas DMA.⁹ Community operates cable television systems in the Communities, which are also in the Little Rock-Hot Springs, Arkansas DMA.¹⁰ Therefore, KVTH-TV qualifies as a local station entitled to mandatory carriage on Community's cable systems serving the Communities, providing it delivers a good quality signal to the cable systems' principal headends.¹¹

5. By letter dated August 2, 2002, Agape requested carriage of KVTH-TV on the Community cable systems serving the Communities.¹² On September 20, 2002, more than thirty (30) days after the date of the request for carriage, Community's general manager informed KVTH-TV's general manager of a proposal for carriage that did not include certain of the cable systems, which was followed by an E-Mail dated September 25, 2002. This E-Mail asserted a belief, unaccompanied by any supporting data, that KVTH-TV failed, with one exception, to provide a good quality signal to the principal headend of the cable systems serving the Communities.¹³ Agape filed the complaint on October 31, 2002, which is within sixty (60) days from September 2, 2002, the due date for a response to Agape's must carry request.¹⁴ Agape also stated in the Complaint that it agreed to be responsible for the cost of delivering a good quality signal to the principal headends of the cable systems serving the Communities.¹⁵

6. We dismiss the Complaint, in part, with respect to the cable systems serving Royal and the unincorporated portion of Clark County, Arkansas. Community showed in its Opposition that KVTH-

⁴ See *Must Carry Order*, 8 FCC Rcd at 2991.

⁵ 47 C.F.R. § 76.55(c)(3).

⁶ 47 U.S.C. § 534(h)(1)(B)(iii); 47 C.F.R. § 76.55(c)(3).

⁷ *Must Carry Order*, 8 FCC Rcd at 2991.

⁸ See 47 U.S.C. § 534(b)(1)(A); 47 C.F.R. § 76.56(b)(1). A "cable system" is defined as a facility consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable service to multiple subscribers within a community. See 47 C.F.R. § 76.5(a).

⁹ Complaint at 1-2.

¹⁰ *Id.* at 3-4.

¹¹ See *Must Carry Order*, 8 FCC Rcd at 2976-77.

¹² Complaint at 2-3.

¹³ *Id.* at 2-4.

¹⁴ The Commission will accept must-carry complaints filed pursuant to Section 76.61(a) of the rules, if they are filed within 60 days after the denial by a cable television system operator of a request for carriage, or the failure of a cable operator to respond to such request within 30 days. See 47 C.F.R. §§ 76.7 & 76.61(a)(3).

¹⁵ Complaint at 4.

TV is currently carried on its cable systems serving these two communities.¹⁶

7. Community requested dismissal of the Complaint on the grounds that two its cable systems are small systems, asserting that these cable systems serve only 164 subscribers in Friendship/Donaldson, and 200 subscribers in Magic Springs. However, Community failed to establish on this record that these cable systems provide fewer than 12 activated channels to qualify for the statutory relief from the must carry requirements for cable systems serving fewer than 300 subscribers set forth in Section 614(a)(1)(A) of the Communications Act. The Commission has no authority to waive the statutory must carry provisions with respect to these cable systems. Otherwise, Community has made no showing sufficient to establish that KVTH-TV is not entitled to must carry on its cable systems serving these communities, and carriage of KVTH-TV in the communities will be ordered.

8. Community further requested dismissal of the Complaint with respect to cable systems serving East Camden, Jones Mill, Norman, Percy, and unincorporated portions of Garland County, on the grounds that KVTH-TV fails to deliver a good quality signal to the principal headend of these systems. Community contends that the blocking effect of Trap Mountain located between these communities precludes the station from ever being able to deliver a good quality signal.¹⁷ The alleged lack of a good quality signal is supported by signal strength studies.¹⁸

9. In view of Agape's commitment, set forth in the Complaint, to meet the cost of delivery of a good quality signal to the cable system headends, we grant, in part, KVTH-TV's must carry complaint with respect to the Community cable systems serving East Camden, Jones Mill, Norman, Percy, and unincorporated portions of Garland County, conditioned upon KVTH-TV delivering a good quality signal to the cable systems' principal headends serving these communities.¹⁹

¹⁶ *Id.* at 3-4. The Complaint will not be dismissed with respect to the other communities. We find that the inclusion of Royal and Clark County in the Complaint does not constitute a lack of candor or rise to an abuse of the Commission's processes, as Community suggested.

¹⁷ Opposition at 4-6.

¹⁸ *Id.* at 5 and Exhibits A-D.

¹⁹ See, e.g., *Hispanic Key Broadcasting Corp.*, 15 FCC Rcd 15061 (CSB 2000); *Channel 29 of Charleston, Inc.*, 16 FCC Rcd 13936 (CSB 2001).

III. ORDERING CLAUSES

10. Accordingly, **IT IS HEREBY ORDERED**, that the Must Carry Complaint filed October 31, 2002 by Agape Church, Inc., licensee of television station KVTH-TV, **IS DISMISSED** with respect to Royal and unincorporated portions of Clark County, Arkansas.

11. **IT IS HEREBY FURTHER ORDERED** that Community Communications, Inc. **SHALL COMMENCE CARRIAGE** of television station KVTH-TV within sixty (60) days from the release date of this order on its cable systems serving Friendship/Donaldson and Magic Springs, Arkansas.

12. **IT IS HEREBY FURTHER ORDERED** that Community Communications, Inc. **SHALL COMMENCE CARRIAGE** of television station KVTH-TV within sixty (60) days from the date that station KVTH-TV delivers a good quality signal to the principal headends of its cable systems serving East Camden, Jones Mill, Norman, Percy, and unincorporated portions of Garland Counties, Arkansas.

13. This action is taken pursuant to authority delegated by Section 0.283 of the Commission's rules.²⁰

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert, Deputy Chief, Policy Division
Media Bureau

²⁰ 47 C.F.R. § 0.283.